

Claim 6, lines 2-3 delete "characterized by" insert --has-- thereof.

Remarks

Exhibit A is a marked up copy of the Claims.

Exhibit B is a clean copy of the presently pending Claims.

The Examiner has objected to Claims 4 and 6. The amendments to Claims 4 and 6 overcome these objections.

The Examiner has rejected Claims 1-10 under the judicially created doctrine of obviousness type double patenting as to U.S. Patent Nos. 6,436,887 and 6,495,499. The amended Claim 1 sets forth a nonwoven fabric which cannot be inferred from the disclosures of U.S. Patent Nos. 6,436,887 and 6,495,499. Accordingly, this rejection is without merit.

The Examiner has rejected Claims 1-10 under 35 U.S.C. 103(a) as being unpatentable over Blanvalet et al in view of Lloyd et al or Smith III et al.

This rejection is not valid for the following reasons.

This 35 U.S.C. 103 rejection of the Examiner is grounded in pure hindsight. The mandate in 1993 of 35 U.S.C. 103 clearly requires that the references at least minimally suggest the combination of references to solve the problem as solved by the instant invention. Where does any of the reference suggest the formation of a wipe having the substrate as specified in amended Claim 1? 35 U.S.C. 103 requires the references suggest the wipe as specified. The Examiner's attention is drawn to:

I. In Heckle Corp. vs. Coral, Inc. (DC NJLL 12/28/90), 21 USPQ 2d 1081, the Court said:

"Obviousness is not determined by ability of infringer to reconstruct invention from prior art, lone after it had copies patent and not prior art.

Mere fact that individual elements of invention are old and can be found in prior art is irrelevant in determining whether challenger has proven that combined prior art rendered patent obvious.

Defendant's attempt to establish obviousness based not only on multiple references but also on presuppositions that person of ordinary skill would necessarily pick and choose among multitude of disclosures to combine them exactly as did inventor is insufficient to meet its burden of proof."

2. In Pentech International Inc. vs. Hayaduchok (DC SNY 11/12/90), 21 USPQ 2d 1337, the Court said:

"Combination of prior art features which represents the improvement over prior combinations will not be deemed obvious unless there is some teaching or suggestion in prior art that combination be made; fact that inventor may have arrived at combination by process of elimination, by testing and rejecting combinations that would not work in desired way, is not necessarily ground for invalidation of patent."

The challenge of the Examiner is whether any of her references suggest the combination. The answer to the challenge is no and therefore, according to Pentech International, Inc. case, the claims are allowable. Moreover, it is submitted that the combination of references proposed by the Examiner is an application of hindsight using the applicant's disclosure as the basis for combination. The Court of Appeals has rejected this approach on numerous occasions.

In ASC Hospital Systems, Inc. vs. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir., 1984) the court states:

"To properly combine the references to reach the conclusion that the subject matter...would have been obvious, case law requires that there must have been some teaching, suggestion, or inference in either reference, or both, or knowledge generally available to one of ordinary skill in the art to combine the relevant teachings of the reference." 221 U.S.P.Q. at 933.

The references, viewed by themselves and not in retrospect, must suggest doing what applicant has done. In re Shaffer, 229 F.2d 476, 108 U.S.P.Q. 326 (C.C.P.A., 1956).

The Examiner is also referred to:

"Prior art reference that gives only general guidance and is not at all specific as to particular form of claimed invention and how to achieve it may make certain approach "obvious to try" but does not make invention obvious." Obukowicz, Ex parte (Bd Pat App & Inter, 10/30/92) 1063

The Examiner's contention appears to be that there is no requirement that a motivation to make the modification be expressly articulated. This reasoning is completely without basis in the law. This concept is in error. The Examiner is referred in particular to the August 6, 1993 decision of the Board of Patent Appeals and interferences in Ex parte Levengood, Bd Pat App & Inter 8/6/93, p.1300, wherein the Board

again restated the requirements that an Examiner must use in combining references to maintain a valid and proper 35 U.S.C. 103. The Board in Ex parte Levengood stated that: "Examiner cannot establish obviousness through references describing various aspects of applicants invention unless Examiner also provides evidence of motivating force to impel person skilled in art to do what applicant has done". Simply, Ex parte Levengood is clearly stating that the motivation to combine the references must be articulated and in fact there must be evidence which the Examiner can rely on to prove the motivation to combine the references to solve the problem solved by the invention under consideration. Simply, none of the refers teach, infer or even remotely imply the wipe of the instant invention. There is no evidence of motivation in any of the references to accomplish this.

There is no teaching, inferring or suggestion in Blanvalet et al to impregnate his cleaning solution into a substrate. How would one know from a fair reading of Blanvalet et al that a stable wipe that did not leak liquid from the substrate could be produced. Blanvalet et al, Smith III et al and Lloyd et al do not teach a substrate comprising wood pulp fibers, viscose fibers and polyester fibers.

Neither Smith III et al or Lloyd et al teach, imply or infer the substrate as set forth in amended Claim 1.

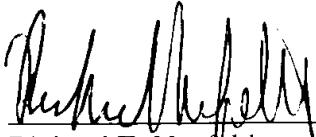
As to Lloyd et al there is no even a remote inference to impregnate a cleaning solution into his wipe. In fact, his wipe is a dry wipe without any cleaning solution.

As to Smith III et al his cleaning solutions are emulsions. Claim 1 as amended specifically excluded emulsions.

Accordingly, the Examiner has failed to set forth a *prima facie* case of obviousness and the 35 U.S.C. 103(a) rejection is without legal or factual basis.

The Examiner is respectfully requested to remove his objections and rejections and pass to issuance
Claims 1-10.

Respectfully submitted,



Richard E. Nanfeldt
Attorney for Applicants
Reg. No. 27,050

REN/kml

June 5, 2003



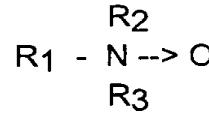
(Once an ~~original~~)

RECEIVED

Exhibit A

What Is Claimed:

1. A cleaning wipe which comprises approximately:
 - (a) 20 wt. % to 40 wt. % of a nonwoven fabric; and
 - (b) 60 wt. % to 80 wt. % of a liquid cleaning composition being impregnated
- 5 in said nonwoven fabric, wherein said liquid cleaning composition comprises:
 - (i) 0.5 to 35% of at least one unsaturated fatty acid having about 8 to 24 carbon atoms;
 - (ii) 0.1 to 2.5% of an alkali metal hydroxide;
 - (iii) 0.02 to 2.0% of an amine oxide;
 - 10 (iv) 0.02 to 2.0% of a sultaine; and
 - (v) the balance being water.]
2. The wipe according to Claim 1, further including a C₁-C₄ alkanol.
3. The wipe according to Claim 1, wherein said metal hydroxide is potassium hydroxide.
- 15 4. The wipe according to Claim 3, wherein said amine oxide is characterized by the formula:



- 20 wherein R₁ is a C₁₂-16 alkyl and R₂ and R₃ are selected from the group consisting of methyl, ethyl, propyl, isopropyl, 2-hydroxethyl, 2-hydroxypropyl and 3-hydroxypropyl.
5. The wipe according to Claim 4, wherein said amine oxide is cocoamido-propylamine oxide.
6. The wipe according to Claim 1, wherein said sultaine is characterized by
- 25 the formula: *Febone*

consists of
60% to 80% wt. of
wood pulp fiber, 2.5% to
20 wt% of cocamide behenate
2, 3, 5, 20 wt% of polyvinylidene
10 wt% of B B B

RECEIVED
TC 1700
AUG 21 2003

Abstract of the Disclosure

A cleaning wipe comprising a nonwoven fabric wherein the nonwoven fabric is impregnated with a cleaning composition.

5

Claim 4, lines 2-3 delete "Characterized
by "enriched - has - - thereof"

Claim 6, lines 2-3 delete "Characterized by - - enriched - - has - -
thereof

Exhibit B

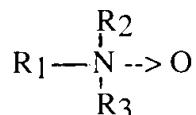
1. A cleaning wipe which comprises approximately:

- (a) 20 wt. % to 40 wt. % of a nonwoven fabric consisting of 60% to 95 wt. % of wood pulp fibers, 2.5 to 20 wt. % of viscose fibers and 2.5 to 20 wt. % of polyester fibers; and
- (b) 60 wt. % to 80 wt. % of a liquid cleaning composition being impregnated in said nonwoven fabric, wherein said liquid cleaning composition comprises:
- (i) 0.5 to 35% of at least one unsaturated fatty acid having about 8 to 24 carbon atoms;
 - (ii) 0.1 to 2.5% of an alkali metal hydroxide;
 - (iii) 0.02 to 2.0% of an amine oxide;
 - (iv) 0.02 to 2.0% of a sultaine; and
 - (v) the balance being water, wherein the liquid cleaning composition is not an emulsion and does not contain proteins, enzymes, amides, sodium hypochlorite, dimethicone, a proton donating agent, N-methyl-2-pyrrolidone, monoalkyl phosphate or silicon based sulfosuccinate.

2. The wipe according to Claim 1, further including a C₁-C₄ alkanol.

3. The wipe according to Claim 1, wherein said metal hydroxide is potassium hydroxide.

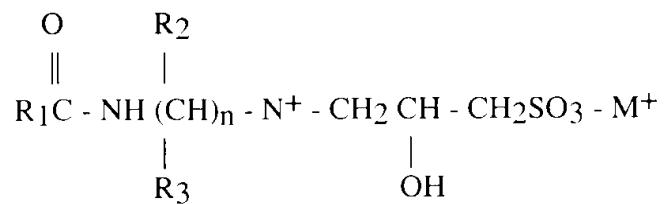
4. The wipe according to Claim 3, wherein said amine oxide is has the formula:



wherein R₁ is a C₁₂-16 alkyl and R₂ and R₃ are selected from the group consisting of methyl, ethyl, propyl, isopropyl, 2-hydroxethyl, 2-hydroxypropyl and 3-hydroxypropyl.

5. The wipe according to Claim 4, wherein said amine oxide is cocoamido-propylamine oxide.

6. The wipe according to Claim 1, wherein said sultaine is has the formula:



wherein n is about 1 to about 5, M^+ is an alkali metal cation, R_2 is a methyl or ethyl group, R_3 is a methyl or ethyl group, and R_1 is a saturated or unsaturated alkyl group having about 6 to about 24 carbon atoms.